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Commentary

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# Canadian Environmental Policy:

## Why Process Is Almost Everything

*by*

*G. Bruce Doern*

In the current debate about Canadian environmental policy, there is a justifiable focus on the policy process. Process is too frequently assumed to be the realm of bureaucrats, however, and is often examined simplistically. In fact, in environmental policy, process is almost everything. The focus on process flows not only from concerns about basic democracy, but also from the need to educate Canadians about the links between ecology and the economy and about the need to deal with especially difficult intergenerational choices.

An assessment of the environmental decisionmaking process must differentiate between three major types of decisions: on policies, on projects, and on the setting of standards. Influencing the process in all three cases are the nature of democratic legitimacy; concerns about efficiency and international competitiveness; and issues related to scientific, technological, and analytical controversy.

The environmental decisionmaking process is complex, and is likely to become even more so in the 1990s. It must be recognized, however, that environmentalists hold the political high ground on matters of process, and business and government will have to demonstrate that they are in step. In the short term, the process is likely to slow down until the public gains confidence that business and government are learning and practicing new ways to reach decisions on matters affecting the environment.

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## Introduction

In democratic policymaking, "process" always matters. But in environmental policymaking, process seems to be everything. A large part of the federal government's 1990 discussion paper on the environment was about the decisionmaking process and the need to radically change it. The recently tabled federal legislation on reforms in environmental assessment was overwhelmingly about process. Why is process the dominant concern? How does the environmental policy process affect the capacity to make progress on the substance of environmental policy? Is there a danger that "processitis" will set in, immobilizing institutions and rendering impossible the necessary reconciliation between the economy and the environment? These are the questions this *Commentary* examines.

At its core, the need to reform environmental decisionmaking processes is based on the basic democratic right of Canadian citizens to be involved in public decisionmaking, whatever the issue. But in environmental matters, there is an additional supportive rationale: the need to engage in a vital and continuous public education process so that all segments of society understand the links between ecology and the economy — in particular, their intergenerational impacts.

The basic line of argument presented here is quite straightforward. First, the environmental decisionmaking process is complex for justifiable reasons, and is destined to become even more elaborate in the 1990s. Second, in the short to medium term, environmentalists will hold the political high ground, while business and government will have to show that they are in step. Third, again in the short to medium term, decisionmaking processes will likely slow down until the public gains confidence that new habits are, in fact, being learned and practiced.

To shed light on the realities of environmental decisionmaking processes, this *Commentary* proceeds through three stages of analysis. The first is to appreciate where the impetus for change is coming from. The second is to understand the dynamics of decisionmaking for policies *versus* projects *versus* standards setting. The final stage deals with the influences on decisionmaking of three factors: concepts of democratic legitimacy; concerns about efficiency and international competitiveness; and the dynamics of scientific, technological, and analytical controversy.

## The Impetus for Change

Concerns about the environmental decisionmaking process have a long legacy. For many Canadian environmentalists, the symbolic starting point is the Berger Inquiry of the mid-1970s. Justice Thomas R. Berger sought the views of residents of numerous small northern communities in his assessment of the possible effects of the proposed Arctic Gas natural gas pipeline; his report led to a moratorium on the pipeline's construction. Many other environmental inquiries followed, on issues such as nuclear power and uranium mining. Canadian environmentalists also looked with envy in the 1970s and 1980s to the much more stringent requirements in the United States for the conduct of environmental assessments.

More recently, the impetus for changing the decisionmaking process has come from court cases on projects such as the Rafferty-Alameda Dam in Saskatchewan and the Oldman River project in Alberta. Decisions in these cases ruled that the federal government had failed to carry out the appropriate assessments; Ottawa apparently had regarded such reviews not as binding legal requirements but only as guidelines.

The renewed focus on process also flows inevitably from the federal and provincial governments' adoption of "sustainable development". While interpreted in various ways, this concept implies the need to integrate environmental and economic rationales into the decisionmaking process, as well as the need

**Box 1**

***A Comparison of the Current Environmental Assessment and Review Process and Proposed Federal Reforms***

- The Minister of the Environment will make decisions on public reviews (currently, the responsible authority makes them).
- All major projects will undergo mandatory assessment (currently, these are discretionary).
- Mandatory assessments of major projects will include: cumulative effects relative to other projects; reasons for the project; alternative ways of carrying out the project; effects on resource sustainability; formalized public consultation (none of these is currently mandated by law).
- Public registries will be maintained for all assessed projects (currently, these are *ad hoc* and voluntary).
- Public review panels, including the Chair, will be fully independent of government (currently, such panels are chaired by public servants from the Federal Environmental Assessment Review Office).
- Public review panels will have subpoena powers (currently, they rely on the good will of participants).
- There will be provision for the mediation of environmental disputes (none is now available).
- Follow-up and monitoring plans will be required for major projects (no such plans are now required).
- There will be express provision for the assessment of environmental effects on off-reserve lands (not now required).
- The Canadian Environmental Assessment Agency will be separate from the Department of the Environment (currently, it is administratively dependent on the department).
- A formal participant funding program will be put in place (currently, such funding is *ad hoc*).
- A process will be established to assess governmental policy initiatives (such a process is not now required).

Source: Adapted from Federal Environmental Assessment Review Office, Fact Sheet # 4, June 18, 1990.

for decisionmakers to be anticipatory, rather than reactive, in considering environmental factors and consequences.

Any doubts that process matters were put to rest by the recently tabled federal initiatives on environmental assessment. The package includes a new *Canadian Environmental Assessment Act* and other nonstatutory procedural changes to cabinet decisionmaking processes (see Box 1). There is little doubt that, when these changes are adopted, the environmental decisionmaking process will become more complex, and the nature of these changes are an important background reality for the analysis that follows.

## Three Types of Decisions: Policies, Projects, and Standards

An assessment of current or proposed changes to the decisionmaking process must, to some extent, differentiate between three types of decisions: on policies, on projects, and on standards (see Box 2). In the ordinary course of events, the three should be seen as a logical hierarchy. At the top are policies, from which flow decisions on projects and then decisions on standards for particular pollutants or production processes. This is often the pattern of unfolding events; on closer examination, however, the situation frequently is not this tidy. Projects may beget new policies, or set precedents that become policies for future projects.

### *Policies*

Policies are statements of general intent and direction that set out a government's major purposes in pursuing particular goals and some of the means to be used to achieve them. In most practical situations, however, a complex "nesting" of policies occurs. Thus, for

**Box 2**

***Characteristics of Three Decisionmaking Processes***

*The Policy Process*

- No experience with formal environmental assessments.
- Problem of "nesting" of several policies concurrently — for example, intermingling of fiscal, energy, social, and regional policies.
- Issue of different stages of policy formation — when is a decision a "new" policy?: problem definition; assessing options; decision impacts; *ex post* evaluation.
- Issue of who should assess?: line department; Environment Canada; outside expert panels.

*The Project-Approval Process*

- Significant experience with formal environmental assessments since mid-1970s.
- Longer physical planning cycle than most policies.
- Financial, capital-market, and pricing sensitivities and risk sharing.
- High political risk due to high possibility of conspicuous success/failure.
- Often, urban visibility at early stages but hinterland-based consequences over the medium to long term.

*The Standards-Setting Process*

- Varied statutory and guideline-based requirements for environmental assessments and hearings.
- Usually less visible than either policies or projects.
- Mix of standards *versus* guidelines to accommodate diverse industrial situations.
- Meaning of equity or fairness in dealing with old *versus* new plants and facilities.
- Varied large and small stakeholders.
- Scientific and technological complexity and controversy especially germane.

example, a decision on an energy issue or project usually involves not just energy policy, but a nest of energy, fiscal, regional, and social/employment policies.

Policy formation can also be portrayed as stages of the cabinet decisionmaking process, whereby goals are enunciated, options and effects are explored, a decision is made, and evaluations of results are undertaken. A rough count of federal cabinet documents suggests that about 1,000 such policy and decision cycles occur annually. But here also, it is never totally clear when a policy process is truly "beginning" or whether one is merely engaged in a series of marginal changes as opposed to fundamental reviews.

At the federal level, there is no statutory or cabinet requirement to assess policies against environmental criteria or against a framework of sustainable development. Indeed, the federal cabinet has never been subject to any statute that purports to tell it to take into account or give priority to any particular values in making decisions. This will now change to some extent with the federal government's announcement that, on a nonstatutory basis, all new cabinet policies and programs will undergo prior environmental assessment and that summaries of such assessments will be made public.

## *Projects*

Projects, in this context, are large facilities such as pipelines, dams, pulp mills, airports, and energy production facilities. They are capital intensive in that 50 percent or more of their cost typically is in initial capital outlays. Projects have been the focus of environmental assessments at both the federal and provincial levels since the mid-1970s. But until the recent court cases noted above, such assessments and accompanying hearings have been partially at the discretion of cabinet.

The project-approval process is different from normal policymaking in several ways.

First, projects usually involve a multiyear physical planning cycle.

Second, they are especially sensitive to problems of financing and capital markets, interest-rate issues, future price movements, and risk sharing between private and public decisionmakers.

Third, they involve high political risk, which is often tied to political and corporate leaders' sense of conspicuous political success or failure.

Fourth, many large projects are based in the hinterland, physically remote from national and provincial capitals and other large urban centers. In urban areas, projects are all too visible, and tend to attract political attention at the time of decision and perhaps construction. In the hinterland and less-populous areas, however, the social and environmental effects of these projects occur over a much longer time. Thus, the effects in urban Canada can be, as it were, "out of sight, out of mind." This also applies to projects involving aboriginal rights and land claims.

### *Standards*

In the standards-setting process, rules are devised regarding specific effluents, pollutants, or production technologies pursuant to parent legislation and/or regulations. Thus, such processes become quite narrowly focused exercises. In certain specific areas, such as nuclear hazards, they have long been subject to statutory requirements for hearings, and to cabinet guidelines in other situations. An example of the latter is the current consultation exercise accompanying the development of control measures on nitrogen oxides and volatile organic compounds — so-called NOx and VOC emissions.

Standards setting may apply to, or seek to accommodate, both old and new industrial plants. Standards are premised on varied assumptions and concepts of risk and benefit. Indeed, some may not be firm rules at all, but may be promulgated as targets or "guidelines".

Standards setting is usually a less noticeable event to the general public than is a general policymaking decision or a decision on a large project. It involves varied and changing sets of stakeholders — businesses, unions, provinces, environmental coalitions — depending on the particular pollutant or hazard undergoing regulatory review. It is a process in which particular scientific and technical issues become especially salient.

This initial profile of the three types of decisions is a clear indication of the complexity of the environmental decisionmaking process and, indeed, of why it is difficult to speak of a single environmental policy process at all.

## Influences on Environmental Decisionmaking Processes

The second step toward understanding environmental decisionmaking is to distinguish three basic influences that continuously affect the process. As Box 3 shows, these are: the nature of democratic legitimacy; the issue of economic efficiency and international competitiveness; and the dynamics of scientific, technological, and analytical controversy. Each is profiled below, with periodic reference to some specific examples.

### *The Nature of Democratic Legitimacy*

Judgments about the adequacy of the decisionmaking process are complicated by the fact that there is no single, agreed-on concept of democratic legitimacy. At one level, extreme environmentalists — who are not in the majority among members of environmental interest groups — seek absolutist solutions: the particular array of values they espouse must prevail over all others. Some of these values are fundamentally opposed to industrialization and to capitalism in all its forms. At the opposite level, some business interests that are anti-environment — again, a small minority — seek to impose equally absolutist standards.

**Box 3**

***Influences on Decisionmaking Processes***

*The Nature of Democratic Legitimacy*

- Absolutist standards of legitimacy *versus* liberal-pluralist politics.
- Further aspects of legitimacy within liberal-pluralist politics: the accountability of cabinet and Parliament; democratic federalism; special-interest politics.
- Balance between the need for reasonable process *versus* the democratic capacity to make effective, substantive decisions toward sustainable development.

*Economic Efficiency and International Competitiveness*

- The use and payback of current capital equipment and production technology.
- The timing and cost of introducing new production processes relative to domestic and international competitors.
- Varying circumstances of firms within sectors: big *versus* small; mixes of production technologies.
- Varying circumstances among sectors — for example, pulp and paper *versus* telecommunications.
- The use of least-social-cost environmental solutions and options consistent with agreed-on reduced pollution levels.
- Plant closure and location decisions, Canadian and continental.
- Pressure to harmonize environmental standards with those of other countries.
- Tough environmental standards and new pricing policies as a spur to economic competitiveness.

*Scientific, Technological, and Analytical Controversy*

- Debates on the degree of environmental health and safety: zero risk; threshold levels; irreversibility of effects; balancing concepts.
- Human health *versus* health of plants, animals, and the ecological system.
- Scientific and technological controversy over: best available technology; causal knowledge; the "more research" game.
- Interactions among multiple pollutants.
- Debates over the adequacy of decision techniques: environmental impact statements; cost-benefit analysis; regulatory negotiation ("reg-neg"); mediation.

The outcome of some recent debates on process could well have been to adopt inherent absolutist democratic criteria. In the debate about making all federal cabinet policies subject to *statutory* environmental assessment processes, for example, the argument centered on whether environmental values ought to be given such potential statutory precedence over other, equally important Canadian values such as regionalism, equality, or efficiency. Partly for these democratic reasons and partly because of bureaucratic turf wars, the cabinet did not adopt this kind of environmental entrenchment on a statutory basis.

The main alternatives to absolutist views are positions espoused by institutions and stakeholders who seek democratically legitimate decisions on the basis of some broad philosophy of liberal-pluralist politics. This philosophy encompasses reasonable opportunities for participation, but also reasonable assurance that decisions will, in fact, be made in a timely and effective way.

However, within this liberal-pluralist band there reside three further, and often conflicting, aspects of democratic legitimacy. The first consists of the norms of cabinet and parliamentary government, where ministers are accountable to elected representatives for the decisions they reach — including decisions on policies, projects, and standards. Sometimes, these decisions are delegated to independent agencies, but overall they imply an accountability that operates upward through bureaucracies to ministers and then outward to Parliament and the Canadian people.

The second aspect of democracy within the pluralist model is democratic federalism. The

assignment of different jurisdictional powers to the federal government and to the provinces is a political fact of life in Canada. When combined with the *de facto* overlap of powers in areas such as the environment and the economy, democratic federalism means that decisions in Canada often have two hoops to go through rather than the one that is standard in any unitary country. Canada's physical expanse and diverse regional economies also mean that particular environmental priorities will vary enormously across the country. So, too, will their relative urgency.

Layered over the parliamentary system and democratic federalism is the further reality of interest-group pluralism. Indeed, many argue that Canadian political life is increasingly dominated by the politics of single-issue special interests woven into the fabric of the Charter of Rights and Freedoms.

At the local level, this trend is evident in the "not in my back yard" (NIMBY) phenomenon. Special interests are often portrayed as irresponsibly oblivious to any notion of a larger public interest or to the need for democratic consensus in reaching decisions capable of solving real problems. Regardless, interest-group politics tugs legitimacy away from parliamentary government — downward from bureaucracies and ministers, and outward to the clash of stakeholders who see process as a democratic right and as an arena for continuous tactical maneuvering.

Environmental decisionmaking processes cannot escape this trio of features that reside within the concept of liberal-pluralist politics. Ministers will be held accountable for the decisions they make on policies, projects, and standards. Federal, provincial, and local government values and interests will sometimes reinforce and sometimes collide with the imperatives of interest-group rights and tactics.

## *Economic Efficiency and International Competitiveness*

All environmental decisionmaking processes are directly or indirectly influenced by considerations of economic efficiency and international competitiveness. Even when viewed in a purely domestic context — a rare luxury these days — there are few environmental choices that do not affect the use of current capital equipment and its payback assumptions to the firm, or the cost and timing of new production technologies and the launching of new products.

An equally unavoidable reality is that economic circumstances among firms within the same industry are extremely varied. Often, these differences are the kind that arise between big and small firms, but they may equally arise from other factors, such as the particular mix of technologies employed in the production process. Similarly, there will often be even more widely varying economic circumstances among different industrial sectors — for example, the pulp and paper industry and the telecommunications sector face vastly different environmental situations.

In a domestic sense, there is always a public or social gain if a given set of environmental choices can be achieved at the least social cost. By definition, this leaves more resources to devote to other goals that Canadians value. Allocative efficiency thus bears directly on the reasonableness of hearing and assessment processes, and on the avoidance of federal-provincial duplication of effort. Equally, however, some efficiencies can be achieved and economic opportunities created through a better consideration of environmental options at the earliest stages of the decisionmaking process in cabinet and in the corporate boardroom.

But if these points are true in a domestic sense, they are even more compelling in the context of the 1990s, when international competitiveness is a key factor in the development and marketing of new products and in decisions to locate new plants. While production, modernization, and location decisions are a function of numerous factors — labor skills and costs, resources, the cost of capital, and exchange rates — they can also be influenced at the margin by the nature and character of

environmental rules and the flexibility of their timing and mode of adoption. This is especially the case in the context of new North American continental markets, but also in the larger European and Third-World settings.

For many people, these realities immediately conjure up images of pollution havens where lax standards become a device to attract new industry. Or they evoke concerns about Canada's having to harmonize its standards with some lower, continental standard — a view that emerged in the free trade debate. Fortunately, the economic world is too complex for such quixotic generalizations. While it probably remains true that a country's overall environmental standards cannot vary too much from those of its main competitors, there is nonetheless considerable room for more local requirements, given the diverse circumstances of different industries and firms.

Moreover, evidence suggests that tough environmental standards or new pricing approaches *can* create opportunities for the competitive development of new products and technologies. But much also depends on how flexible and incentive-based are the complementary control regimes set up to allow firms to adjust to tougher standards. This is precisely why it is essential to experiment with the use of incentive-based approaches — such as tradable pollution permits — as a complement to traditional regulation. Tradable permits allow low-cost firms to adjust more quickly, and offer high-cost firms strong incentives to change their practices by having to buy pollution permits from other firms. In choosing whether to locate a new plant in, say, Ontario or New Mexico, a firm will want to know not only what standards now exist but what mixes of policy instruments a government may use to encourage the firm to adjust to tougher new standards in future years.

One of the great dilemmas about the attempt to reconcile the environment and the economy is the extraordinary gap between the practical nature of modern economies and myths about the environmental debate that have been induced by the mass media. Environmental issues tend to be communicated as universal imperatives: "The polluter must pay"; "There must be one environmental standard for all"; "There should be no second-class environmental citizens"; "All firms must be treated equally." These slogans are too often uttered without sufficient regard to their inherent contradictions or to the degree of variance among the economies and markets that constitute the real world.

## *Scientific, Technological, and Analytical Controversy*

Issues of scientific, technological, and analytical controversy are endemic to environmental decisionmaking, especially standards setting. These issues are ultimately concerned with risk assessment — with the question of how much safety and protection should be and can be provided and at what cost. Disputes occur over the range of effects that are to be considered — from human health, to plants and animals, to complex ecosystems and "ways of life". Disputes also occur over the very nature of risk. Should standards meet the test of "zero risk", or absolute safety? Are there threshold levels or dose-response relationships that cannot be exceeded, but within which effects can be considered safe? How do decisionmakers gauge the probability that irreversible effects might occur in the future?

As standards are developed and debated, numerous disputes also occur over problems of measurement, over what constitutes the best available technology, and over basic "causal knowledge" — is effect $x$ in fact caused by variables $a$, $b$, and $c$? Firms, industries, and governments frequently play the politics-of-science game. That is, the need for "more research" is advocated and, as a consequence, substantive action is continuously postponed until greater certainty of knowledge is acquired. In some instances, this caution is sensible. In other cases, the tactical politics of science is a none-too-thinly-veiled shield for self-interest. Obviously, there is no perfect way to determine whether or not a larger public

interest is being served. But such issues are an explicit part of the process problem.

The issues of finding reasonably independent technical expertise, of having forums that take the time to deal with such disputes, and of inventing institutions that bridge the gap between generalists and experts are not easy to resolve. This is all the more true considering that most contemporary environmental issues involve interactions among many pollutants; increasingly uncertain outcomes; diverse time frames; and increasing doubt that any "technological fix" is possible. For example, the current federal-provincial and international standards-setting exercises regarding NOx and VOC emissions involve several interacting pollutants, a three-phase, 15-year planning cycle, and widely varying regional distribution of the pollution problem.

Concerns over science, technology, and risk have led to the use of a variety of decisionmaking techniques. Environmental impact statements are common, for example, but environmentalists criticize their scientific inadequacy and the unreasonably short time constraints they often impose on analysts. Cost-benefit analysis is also undertaken, but with the usual disputes about discount rates and the adequacy of how costs and benefits are measured. Environmentalists often see cost-benefit analysis as a device that simply lends precision to market-derived values and measures — that is, for meeting the test of "economic man". They regard it as incapable of dealing with the larger ethical and moral questions ingrained in humans as political citizens and community members rather than as consumers and investors. Economists defend the use of cost-benefit analysis by arguing that, while it is not perfect, it is better than other, less precise ways of assessing decisions.

A decisionmaking technique that has recently gained favor in the United States is the "reg-neg" approach, through which direct negotiation of regulations among firms and environmental groups is used to encourage consensus. This tool emerged in the United States as a partial antidote to the rampant litigation and confrontation that characterizes U.S. regulatory decisionmaking processes. Elements of the "reg-neg" approach have now seeped into Canada, mainly in the guise of more streamlined "stakeholder consultation" exercises. Its influence can also be seen in the federal government's proposals to use "mediation" processes in place of, or to complement, environmental assessments. In general, however, the Canadian regulation process has been less confrontational than that in the United States.

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G. Bruce Doern, the author of this issue, is Professor of Public Policy at the School of Public Administration, Carleton University, and a Scholar-in-Residence at the C.D. Howe Institute.

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## Conclusion

When the three types of decisions are related even loosely to the three influences of democratic legitimacy, economic efficiency and international competitiveness, and scientific technological, and analytical controversy, it is clear that numerous permutations and combinations of process and outcome occur in environmental decisionmaking. At any given

time and for any given firm, industry, or government, all three types of decisions may be in operation. Thus, generalizations about process must be viewed with considerable caution. But several concluding observations seem relevant.

First, the environmental decisionmaking process is justifiably complex and is likely to become even more intricate in the 1990s. The complexity arises, first, out of democratic principles, but also out of concerns for public education and the need to sensitize all players to the persistence of tradeoffs between ecology and the economy, for both current and future generations.

Second, all participants in the policy process display a dual approach to decisionmaking. All stakeholders genuinely value their democratic right to be a part of the process. Equally, all stakeholders, without exception, play tactical games with the process. Situations occur when it is in a particular stakeholder's interest to string out the process — to postpone decisions — in the hope of a better outcome. On other occasions, the stakeholder's interest may best be served by speedy, decisive action, where process is kept to the bare minimum. No significant stakeholder can avoid some contradictions between the process values it espouses and the tactics on process it employs.

Third, process will indeed be close to being everything in environmental policymaking in the short term. Environmentalists have the political high road, and business and public institutions will have to demonstrate that they are in step. Changes in decisionmaking processes must occur if sustainable development is to have any practical meaning.

It follows, then, that there will be a slowing down of decisionmaking processes in the short term, until the public gains confidence that new habits are in fact being learned and practiced. There is evidence that government and business are acquiring some such habits, but much more will be needed.

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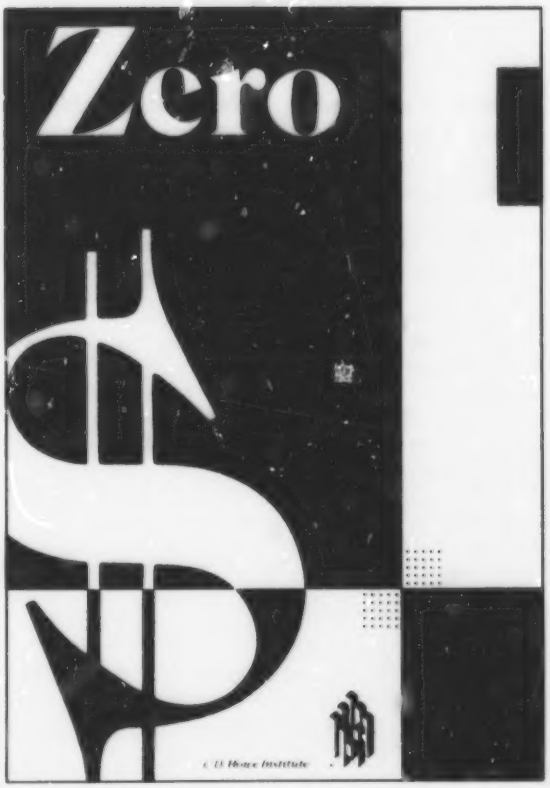
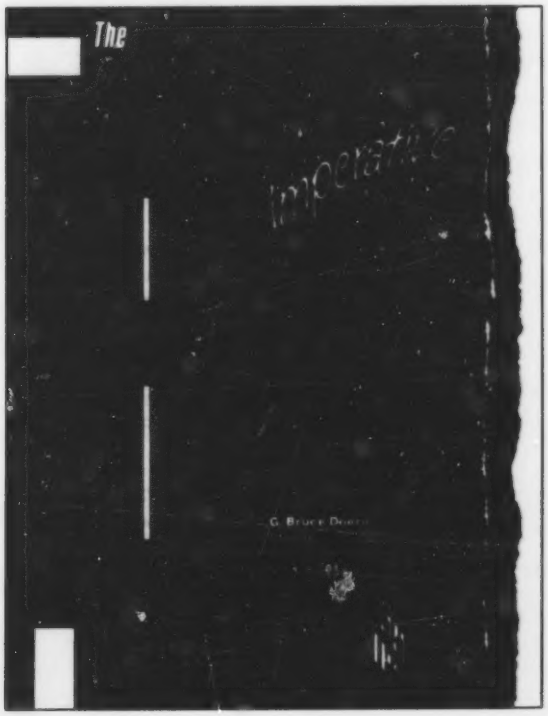



*Zero Inflation: The Goal of Price Stability*, edited by Richard G. Lipsey

Are Canadians better off with zero inflation (or at least stable prices), or is some inflation helpful and, indeed, inevitable? *Zero Inflation: The Goal of Price Stability* presents an explicit endorsement of Bank of Canada Governor John Crow's target of zero inflation. In this study, several of Canada's monetary policy experts recommend that the zero-inflation target be approached gradually, perhaps over a five-year period. Most importantly, however, the study challenges those who argue against a zero target to suggest an alternative goal for Canadian monetary policy.




*The Environmental Imperative: Market Approaches to the Greening of Canada*, edited by G. Bruce Doern

In January 1990, the C.D. Howe Institute convened a conference of industrialists, scientists, technologists, economists, and political scientists to deal with scientific uncertainty, with incorporating the costs of "using" the environment, and with the interrelationships among markets and prices, technological innovation, the environment, and the economy. *The Environmental Imperative* offers some of the papers that were presented at the conference. There are no simple answers to environmental problems. But there is no reason to despair, either.

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